

EXHIBIT 5

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

NICHOLAS BERGERON and NICK)
QUATTROCIOCCHI, on behalf)
of themselves and on)
behalf of all others)
similarly situated,)
)
Plaintiffs,)
)
V.) Lead Case
)
ROCHESTER INSTITUTE OF) NO.: 6:20-cv-06283
TECHNOLOGY,)
)
Defendant.)

ZOOM AND VIDEOTAPED DEPOSITION OF

CHARLES D. COWAN, Ph.D.

JULY 20, 2022

VOLUME 1

ZOOM AND VIDEOTAPED DEPOSITION OF
CHARLES D. COWAN, PH.D., produced as a witness at the
instance of the DEFENDANT, and duly sworn, was taken in
the above-styled and numbered cause on July 20, 2022,
from 9:07 a.m. to 3:06 p.m., via Zoom before Wendy
Schreiber, CSR No. 9383, in and for the State of Texas,
reported by machine shorthand, at the address 205 South
Gulf Drive, Santa Rosa Beach, Florida, 32459, pursuant
to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.
Job No. 850422

1 drawing any conclusion about why the justification is or
2 what the law is, you know, what -- as I said, it's a
3 contracts claim. Well, I'm not a legal expert. I'm --
4 I was told by counsel assume that their position is
5 correct what would be the damages and so my only
6 opinions relate to offering that calculation on the
7 assumption that counsel is correct.

8 Q. The assumptions that you were provided by your
9 counsel, was one of those assumptions that you should
10 use the RIT online tuition price as the benchmark in
11 your analysis?

12 A. I've got to tell you that I got remarkably
13 little information from counsel before I started. They
14 supplied me with the Complaint and said, "Please
15 proceed." So, no, that was not something that counsel
16 told me, that was something we found out through our own
17 research.

18 Q. Did you consider any other benchmark to measure
19 the value of RIT's remote instruction -- the pivoted
20 remote instruction I guess?

21 A. I apologize, I didn't follow all that. Could
22 you ask me that again?

23 Q. Yeah. Did you consider any -- aside from the
24 RIT online program tuition rates, did you consider
25 whether there was -- whether any other data point would

1 be more appropriate as a benchmark?

2 A. I have considered that in a variety of
3 scenarios but for RIT because they had an online program
4 I thought that was the most straightforward comparison
5 in terms of what the courses cost through RIT online
6 versus in person.

7 Q. What were the other benchmarks that you
8 considered?

9 A. If you recall, about an hour ago we talked
10 briefly about the ability to go to NCES and pick up a
11 cluster of comparable schools, okay? So if you look at
12 the set of comparable schools, let's say
13 hypothetically -- I don't know what the number is -- so
14 let's say hypothetically it's 20 in the cluster because
15 each cluster is a different size, but out of that 20
16 maybe 10 of those offer online programs as well as
17 in-person learning and the -- so you can take a ratio of
18 the online to the in-person on a credit-hour basis and
19 that ratio will vary somewhat. If you looked across all
20 the schools that offer online instruction and then took
21 an average of those ratios, that would be a good
22 benchmark, too.

23 Q. And you would look at that -- in looking at
24 those online tuition for those cluster schools did you
25 consider what their online education program looked

1 like? And what I mean by that like, you know, what kind
2 of academic programs are included, what faculty is
3 teaching it, things like that?

4 A. For the -- so if you look at the clustering
5 algorithm used in IPEDS, you find that it -- it takes
6 account of faculty and a variety of other factors to be
7 sure that the -- the schools are comparable. It does
8 not consider whether or not there is an online program
9 which is why you have to do some research to figure out
10 that it's a subset of the cluster. But then after you
11 do that then you have to go and drill down a little
12 further to be sure it's the same faculty that are
13 offering online and in-person training and I think there
14 were one or two other factors we consider. So I didn't
15 do that in this case because RIT already provided me
16 with information telling me it was the same faculty, it
17 was -- they're a great worldwide program. I didn't need
18 to expand out. But you had asked me earlier was there a
19 different benchmark I could have considered and the
20 answer is -- and the answer I gave you is, yes, there is
21 one. Here's how I'd go about doing it but I didn't
22 actually do it in this case.

23 Q. Okay, so -- so I want to be clear that in this
24 case you could have but did not consider other
25 benchmarks. Is that your testimony?

1 A. Yes, and it's because I believe that other
2 benchmarks don't have that characteristic that both
3 prices are offered by the same university.

4 Q. And apart from the statements by RIT that it's
5 the same faculty teaching RIT online and as teaches
6 there on campus-based programs, am I correct in
7 understanding that you did not look to -- look at other
8 metrics to see if the RIT online program was comparable
9 to the RIT on-campus program?

10 A. Well, I don't know what you mean by comparable
11 in this case. So what happens is the students get the
12 same number of credit hours. Those credit hours apply
13 to -- add up to the number that they need to get to get
14 through graduation. It's -- RIT says it's the same
15 faculty. If it's the same faculty, I have to assume
16 that for the most part they're using the same course
17 guidelines for the same courses. So I'm not sure what
18 else to take into account for comparability.

19 Q. Could you, Dr. Cowan, pull up Exhibit --
20 Exhibit 7, the operative Complaint in this action.

21 A. I am there. Thank you.

22 Q. And I want to go back to that class definition
23 at paragraph 46. Let me know when you're there.

24 A. Thank you. I'm there at the bottom of page 8.

25 Q. Yeah. So the -- the tuition class is defined

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11 REPORTER'S CERTIFICATION
DEPOSITION OF CHARLES D. COWAN, Ph.D.

12 JULY 20, 2022

13 I, Wendy Schreiber, Certified Shorthand Reporter in
14 and for the State of Texas, hereby certify to the
15 following:

16 That the witness, CHARLES D. COWAN, Ph.D., was duly
17 sworn by the officer and that the transcript of the oral
18 deposition is a true record of the testimony given by
19 the witness;

20 That examination and signature of the witness to
21 the deposition transcript was waived by the witness and
22 agreement of the parties at the time of the deposition;

23 That the original deposition was delivered to QIAN
24 (SHEILA) SHEN, ESO.;

25 That the amount of time used by each party at the

1 deposition is as follows:

2 QIAN (SHEILA) SHEN, ESQ. - 04 HOURS:37 MINUTE(S)

3 PAUL DOOLITTLE, ESQ. - 00 HOURS:00 MINUTE(S)

4

5 That \$ _____ is the deposition officer's
6 charges to the Party for preparing the original
deposition transcript and any copies of exhibits;

7 That pursuant to information given to the
8 deposition officer at the time said testimony was taken,
9 the following includes all parties of record:

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17 That a copy of this certificate was served on all

18 parties shown herein on _____ and filed

19 with the Clerk pursuant to Rule 203.3.

20 I further certify that I am neither counsel for,

21 related to, nor employed by any of the parties or

22 attorneys in the action in which this proceeding was

23 taken, and further that I am not financially or

24 otherwise interested in the outcome of the action.

25 Certified to by me this 29th day of July, 2022.

26 Wendy Schreiber

27 Wendy Schreiber, Texas CSR 9383

28 Expiration Date: 05/30/24

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